



The State of New Hampshire Insurance Department

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WAIVER APPLICATION DECISION **RE NATIONWIDE LIFE INSURANCE COMPANY'S** **REQUEST TO WAIVE INS 6001.05(a) FOR** **CAREGIVER FMLA INCOME REPLACEMENT COVERAGE**

I. Introduction

On January 4, 2021 Nationwide Life Insurance Company (hereinafter referred to as "Nationwide") submitted a request to the NH Department of Insurance (hereinafter referred to as "Department") for a rule waiver per Ins 6001.07. The request seeks relief from Ins 6001.05(a), which prohibits probationary or waiting periods in ancillary health products. The request for a waiver is specific to Serf filing NWLC-132582123, which contains a benefit waiting period for a caregiver FMLA income insurance filing.

II. Legal Authority

New Hampshire adopted Ins 6001.07 (Waiver of Rules) permitting an insurer to request and the Insurance Commissioner to consider a rule waiver application if certain criteria are met.¹

III. Discussion

Nationwide submitted a request for waiver for its newly designed insurance product, which provides income replacement benefits to caregivers taking qualified leave under the Family Medical Leave Act (hereinafter "FMLA"). Specifically, Nationwide seeks a waiver of the prohibition against probationary or waiting periods, pursuant to Ins 6001.05. Nationwide posits that such a waiting period is necessary to mitigate anti-selection risk from purchasers with known claims at the time of issue. According to Nationwide,

¹ Ins 6001.07 Waiver or Suspension of Rules.

- (a) The commissioner, upon the commissioner's own initiate or upon request by an insurer, shall waive any requirement of this chapter if such waiver does not contradict the objective or intent of the rule and;
 - (1) Applying the rule provision would cause confusion or would be misleading to consumers;
 - (2) The rule provision is in whole or in part inapplicable to the given circumstances;
 - (3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or
 - (4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.
- (b) No requirement prescribed by statute shall be waived unless expressly authorized by law.
- (c) Any person or entity seeking a waiver shall make a request in writing.
- (d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

ordinary anti-selection mitigation measures, such as pre-existing exclusions or limitation applicable to disability and income replacement products, is not appropriate for this new product.

Ins 6001.05(a) prohibits probationary or waiting periods during which no coverage is provided under an ancillary health policy, except for specified disease coverage.² It is appropriate for insurers to mitigate some anti-selection risk in order to offer reasonably priced products to consumers. The Department agrees that strict application of pre-existing exclusions or limitation would not be appropriate for this product.

The purpose of the rule is promote and protect the public good by ensuring the existence of a safe and competitive insurance marketplace. More specifically, Ins 6001 balances the permissions and prohibitions relative to risk mitigation, consumer protection and a competitive marketplace. At the time New Hampshire began the adoption of the Ins 6000 regulatory series in 2018, no product of the type considered herein had been filed in the state, nor had any relevant NAIC model regulation been issued. Thus, application of Ins 6001.05(a) to this type of product had not been contemplated during rulemaking. Strict compliance with the current rule in this situation would be onerous without promoting the objective or intent of the rule. Rather, an alternative standard would be more appropriate for this unique type of coverage. Permitting a benefit waiting period of reasonable duration in caregiver FMLA income replacement products does not contradict the objective or intent of the rule, provided there are no pre-existing condition exclusions or limitations.

IV. Conclusion

As discussed above, strict application of Ins 6001.05(a) does not promote the purpose of the rule provision. Waiving the rule will not contradict the objective or intent of the rule. In this specific circumstance, an alternative standard of permitting a reasonable benefit waiting period better promotes the objective or intent of the rule provision. As such, the Department grants the waiver application and permits a 13 week benefit waiting period on the condition that there are no pre-existing condition exclusions or limitations associated with this insurance filing.

Dated: 1/29/2021


Christopher R. Nicolopoulos, Commissioner

² Ins 6001.05 Prohibited Policy Provisions.

(a) Except as provided in Ins 6001.04(l), an ancillary health policy or certificate shall not contain any provisions establishing a probationary or waiting period during which no coverage is provided under the policy, except for specified disease coverage. Elimination periods shall be prohibited in accident-only and hospital confinement indemnity coverages, unless otherwise stated herein.

#12478, eff 2-12-18; amd by #12629, eff 9-28-18